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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,893	12/10/2003	Philippe Dumoux	DUMOUX3	5162

1444 7590 11/29/2006

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WASHINGTON, DC 20001-5303

EXAMINER
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COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/730,893

Applicant(s)

DUMOUX ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 and 13 is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Receipt of applicant's amendment filed 11/25/2006 is acknowledged.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. **Claims 1-8 and 14-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,920,251 to Whitenack et al. ("Whitenack") in view of U.S. Patent No. 1,751,241 to Kincannon ("Kincannon") and U.S. Patent No. 5,097,753 to Naft ("Naft").

Whitenack discloses in Figures 1-10 a steam cooker in the same field of endeavor as applicant's invention and similar to that described in applicant's claims 1-8 and 14-21. In particular, Whitenack shows a steam cooker having at least one element (50 and/or 70), each having peripheral walls (see Fig. 5), and a pedestal having a steam production base (10). Within the base (10) is a water reservoir/well (see either 37 or 47) for providing steam that is within a vessel (30) for recovering juices that has the structure as recited in applicant's claims. The cooking elements may be arranged in various configurations for stacking in an upright position upon the pedestal base. These cooking elements would be capable of functioning as rice bowls and therefore considered to meet this recitation in the claims (e.g. see applicant's claim 14). The feet (18) or peripheral edges (24) are considered to be the gripping elements recited in applicant's claims 18 and 20.

Whitenack is considered to disclose all the limitations of applicant's claims 1-8 and 14-21 with the exception of cooking elements that are placed in an inverted position on the pedestal so that the peripheral lateral wall at least partially envelopes the pedestal and that the vessel recovers juices is also enveloped at least partially or fully enveloped by the enveloping cooking element. Whitenack also possibly does not disclose that the vessel for recovering juices is removable from the water reservoir.

Kincannon teaches a cooking device in the same field of endeavor as applicant's invention and Whitenack. In Kincannon, the cooking device includes multiple cooking elements (29, 33, 35) that maybe be placed in an upright position for cooking food (see Fig. 1) and in a second inverted position for nesting to facilitate storage wherein the cooking elements at least partially envelope a pedestal base (see Fig. 4, page 1, lines 36-40).

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In regard to the recitation of a lower vessel “for recovering juices,” this statement is regarded as a recitation of the intended use of the vessel. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case the lower vessel/pan (18) is capable of receiving food drippings from the upper cooking elements and therefore meets applicant’s claim limitation. Further, this vessel is considered to be analogous to the lower pan (30) that collects juices shown in Whitenack.

In regard to the recitation that the vessel is at least partially enveloped by the cooking element when in an inverted position, the examiner notes that when the device of Kincannon is arranged in its stacked or nested configuration (Fig. 4) to facilitate storage and transport, the lower pan (18) is also fully enveloped by the surrounding cooking elements. The examiner considers that in modifying Whitenack to incorporate the nesting features of Kincannon a person of ordinary skill in the art would also incorporate the lower pan size shown in Whitenack.

Therefore, in regard to claims 1-8 and 14-21, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the steam cooker of Whitenack to incorporate the cooking element nesting taught and enveloped vessel for recovering juices by Kincannon as this nesting arrangement desirably allows the cooking device to occupy minimum space for transportation or storage (see Kincannon, page 1, lines 36-40) and

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provides a collapsed arrangement for additional cooking techniques (see Kincannon, page 2, lines 100-110).

In regard to the recitation that the vessel for recovering juices is removable from the water reservoir, in Whitenack the water reservoir is formed by a well (37 or 137, Figs. 5 and 10) that appears to be integral with a surrounding water tray (30) that serves to collect juices. However, Naft is relied upon to show that it is understood in the steam cooking art that a heater well that forms a water reservoir may be separate from a water vessel that serves to collect juices. In Naft, a steam cooking device is disclosed that is in the same field of endeavor as both applicant's invention and Whitenack. The steam cooking device includes a water reservoir/well (16) that receives a heater (18) that functions to produce steam (see col. 2, lines 11-13) in the same manner as the water reservoir/well (37 or 137) of Whitenack contains heater (43). While Whitenack shows that the well/reservoir (37 or 137) forms a portion of a surrounding vessel (30), Naft teaches that it is understood in the art that the water tray that receives juice drippings (20, see col. 3, lines 39-41) is separate from the water reservoir (16) (see Figs. 1 and 2).

Therefore, in regard to claims 1-8 and 14-21, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the water reservoir and juice receiving vessel of Whitenack to be separate separable structures, such as shown in Naft, since it has been held that that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. See also MPEP 2144.04 (V)(C). Accordingly, applicant's recitation that the vessel and water reservoir are removable from one another is not considered to patentably distinguish applicant's invention over the prior art of record.

5. **Claims 9-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitenack in view of Kincannon as applied to claim 1 above, and further in view of U.S. Patent No. 691,380 to Hower ("Hower").

Whitenack in view of Kincannon teach all the limitations of claims 9-11 except for the retractable filling device as described.

Hower teaches a steam cooker in the same field of endeavor as applicant's invention and Whitenack. In Hower, the water base includes a filling device (m) that is removable/retractable (see page 2, lines 19-29).

Therefore, in regard to claims 9-11, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the steam cooker of Whitenack to incorporate the removable/retractable filling device of Hower for the desirable purpose of providing convenient packing of the steam cooker (see Hower, page 2, lines 20-23).

***Allowable Subject Matter***

6. **Claims 12 and 13** are allowed.

***Response to Arguments***

7. Applicant's arguments filed 9/18/2006 have been fully considered but they are not persuasive.

Applicant has argued that the claims as amended distinguish over the prior art of Whitenack and Kincannon because of the added limitation that the vessel is removable from the

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water reservoir. However, as noted above, this argument is not persuasive in light of the teaching of Naft that the vessel and water reservoir are understood in the art to be separable structures and the reliance of the above cited authority finding that constructing a formerly integral structure in various elements involves only routine skill in the art.

Applicant has not separately argued against the reference to Hower. Therefore, Hower is considered to properly show that for which it has been cited.

Accordingly, applicant's claims 1-11 and 14-21 are not considered to patentably distinguish applicant's invention over the prior art of record.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on M-F 8:00-5:30.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jcc  
November 25, 2006

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749